

A P P E A R A N C E S

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Official Court Reporter

I N D E X

<u>ITEM:</u>	<u>PAGE:</u>
PROCEEDING HELD ON OCTOBER 22, 2019	4
REPORTER'S CERTIFICATE	22

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E X H I B I T I N D E X

(No exhibits were submitted during this proceeding.)

1 (THE FOLLOWING PROCEEDING WAS HELD ON OCTOBER 22, 2019,
2 BEFORE THE HON. C. JOSEPH NORTON, CIRCUIT JUDGE,
3 COMMENCING AT 2:36 P.M.)

4 THE COURT: The first case we have this
5 afternoon is Bass Enterprises, LLC, et al.,
6 versus Clarence Burke, Jr., et al. We are here
7 today -- or back on August the 27th, I should
8 say, we had a hearing on the Plaintiff's sale
9 for division claim. And correct me if I'm
10 wrong. I believe that was the last unresolved
11 issue in the case was that sale for division
12 claim but -- or the sole remaining unresolved
13 issue, I should say.

14 Did I give you the case number?

15 COURT REPORTER: No, sir.

16 THE COURT: CV-14-900196.

17 And at the hearing on that date, we had
18 pretty much an agreement as it relates to
19 certain aspects of the claim. And I -- again,
20 correct me if I'm wrong. Y'all agreed that the
21 property could not be sold for -- I mean
22 equitably divided and you requested that it be
23 sold for division. And y'all agreed, if I'm not
24 mistaken, that the competing interests were Bass
25 Enterprises, LLC and Pennstar, LLC and each of

1 those entities owned an undivided one-half
2 interest in the respective property. And as
3 such, since y'all agreed that the property could
4 not be equitably divided, I entered an order
5 directing that the property be sold for
6 division. And both parties filed or had timely
7 filed a notice of intent to purchase and request
8 to have the property appraised in accordance
9 with the statute. And I entered an order to
10 that effect based on that agreement. And y'all
11 even agreed that Mr. Courtney would be appointed
12 as an appraiser, and I appointed Mr. Courtney to
13 appraise the property.

14 It's at that point that there was not any
15 real agreement or nothing was brought to my
16 attention about how we should move forward with
17 the sale of the case, and I entered an order
18 setting the case here today on your respective
19 notices of intent to purchase the property.

20 And I have a copy of the appraisal that
21 Mr. Courtney prepared. And you sent that to my
22 office.

23 MR. CHASON: Right.

24 THE COURT: And I believe y'all have all
25 received a copy of the appraisal; is that

1 correct?

2 MR. CHASON: Yes, sir.

3 MR. SUTLEY: Yes.

4 THE COURT: And is that procedurally where
5 everybody agrees that we are right now?

6 MR. CHASON: Yes, sir.

7 THE COURT: And I have a copy of the
8 appraisal, and I have reviewed the appraisal
9 report prepared by Mr. Courtney, and there is
10 one matter that I want to bring to your
11 attention before we go forward. And that is
12 that in Mr. Courtney's report, he utilized six
13 comparable real estate sales to determine the
14 fair market value of the property in the case.

15 The six comparable sales relied upon by Mr.
16 Courtney in making his findings and conclusions
17 includes a sale where the developer listed in
18 Mr. Courtney's appraisal for that comparable
19 sale currently works with my wife. And so I
20 just wanted to bring it to your attention that
21 the developer listed for one of the six
22 comparable real estate sales in Mr. Courtney's
23 appraisal currently works with her. And before
24 I go forward, I just want -- any further, I just
25 wanted to determine if that in any way affects

1 the way we should go forward with the case here
2 today.

3 MR. CHASON: Judge, do you know which one
4 it is out of the six so I can find it?

5 THE COURT: It is -- I believe it's number
6 two.

7 MR. CHASON: The grantees of The Veranda,
8 LLC?

9 THE COURT: Yes.

10 MR. CHASON: That's, I guess, Trey Corte's
11 development.

12 THE COURT: He's listed as the developer.

13 MR. CHASON: Okay. And, Judge, your
14 question to us is whether or not that fact
15 causes us to want to reevaluate the appraisal?

16 THE COURT: Right.

17 MR. CHASON: Can I take just a
18 two-second --

19 THE COURT: Absolutely. Absolutely. Why
20 don't we take about a five minute -- why don't
21 we get started back at 3:00. That will give you
22 15 minutes, or do you need that much time?

23 MR. CHASON: I -- maybe ten minutes. Do
24 you have any --

25 MR. SUTLEY: Look. The only question is

1 really for fairness, was your wife interviewed
2 by Mr. Courtney? I doubt it. He probably got
3 the comps from the sale information.

4 THE COURT: I only --

5 MR. SUTLEY: So if she didn't --

6 THE COURT: I only have the information
7 that was provided to me by Mister --

8 MR. SUTLEY: From Mr. Courtney.

9 THE COURT: No. I actually got this from
10 Mr. Chason. He actually delivered this report
11 to me.

12 MR. SUTLEY: That's where I got it. I got
13 no --

14 MR. CHASON: Judge, if we can literally
15 just take five or ten minutes.

16 THE COURT: You take your time. Go right
17 ahead.

18 MR. CHASON: And I'll walk back and talk to
19 these people.

20 (A recess was held.)

21 THE COURT: All right. Yes, sir.

22 MR. CHASON: Yes, sir, Judge. To the
23 comparable sale number two, in which The
24 Veranda, LLC -- with the grantee that
25 Mr. Courtney used as a comparable sale with

1 coming up with his price, the Plaintiff Bass
2 Enterprises does not have a problem with that
3 fact alone. That does not present a problem to
4 us as to this appraisal, and so we can move
5 forward.

6 THE COURT: You say, as to that alone. Is
7 there some other -- do you have any other
8 concerns that you have?

9 MR. CHASON: Your Honor, we are here today
10 about, you know, submitting the bids to Your
11 Honor per the Court's order. Mr. Courtney did
12 this appraisal pursuant to your order. He used
13 this comparable sale. Right now, based on this
14 information, we don't have a problem with him
15 using this comparable sale. I mean I realize
16 that Trey Corte is involved in that development.
17 That's the extent of my knowledge. So I don't
18 know any more information other than that.

19 THE COURT: But you keep saying like right
20 now. I mean here's what the -- you know, again,
21 you both agree that the property cannot be
22 equitably divided and should be sold for
23 division. You also agreed to have Mr. Courtney
24 appraise the property.

25 MR. CHASON: Yes, sir.

1 THE COURT: However, you both filed notices
2 of intent to purchase the property. And so you
3 have no agreement as to which of you is going to
4 purchase the property ultimately on those
5 notices or the sales price that the Court will
6 be asked to or called upon to ultimately prove
7 in the case.

8 MR. CHASON: Yes, sir.

9 THE COURT: And because those matters
10 remain unresolved, Mr. Courtney's appraisal and
11 the supporting information in that appraisal,
12 including those six comparable sales, are going
13 to be relied upon by you-all as well as the
14 Court in resolving those matters. And if you
15 feel that that's an issue -- and I can't get a
16 good feel of whether it is or not -- then if you
17 have some concerns, then, you know, I am happy
18 to address those.

19 MR. CHASON: Yes, sir. I think the bottom
20 line is that Mr. Courtney came back at \$5,800 an
21 acre using six separate sales to come up with
22 that number. That's the bottom line. And based
23 on what we know currently about market values,
24 about Mr. Courtney's appraisal, we are okay with
25 moving forward today with Your Honor's order

1 that required the parties to submit a sealed bid
2 to Your Honor as based on that \$5,800 per acre.
3 We're okay with doing that today, you know,
4 based on his appraisal.

5 THE COURT: And -- I'm sorry. I
6 interrupted you.

7 MR. CHASON: No, that's fine.

8 Your Honor, what I am referencing is Your
9 Honor's order from, I believe, October 22nd and
10 then in Paragraph 5.

11 THE COURT: Right. And I really want to --
12 And, Mr. Sutley, are you-all satisfied as
13 well?

14 MR. SUTLEY: (Nodding head affirmatively.)
15 We are.

16 THE COURT: If you have any concerns, I
17 just want to address them now.

18 MR. SUTLEY: We don't have any concerns.

19 THE COURT: I don't want to try to go back
20 and address this after the fact. And so if we
21 need to address it further, I'm happy to do so.
22 If you feel that it's an issue, then we can
23 address it now. But if not, I'm prepared to go
24 forward with the sale today.

25 MR. CHASON: Yes, sir, Your Honor.

1 You know, my understanding is today's
2 hearing, that we are going by Paragraph 5 of
3 Your Honor's order that called for the bidding
4 process is my --

5 THE COURT: Yes.

6 MR. CHASON: -- understanding of what's
7 going to transpire today.

8 THE COURT: Yes.

9 MR. SUTLEY: (Approaching the bench.)

10 MR. CHASON: It would be -- and then if you
11 look at the bottom of Paragraph 5 --

12 THE COURT: I'm not taking those right now.

13 MR. SUTLEY: I understand.

14 THE COURT: Go right ahead.

15 MR. CHASON: And, Your Honor, the bottom of
16 Paragraph 5, it says, The Court shall conduct a
17 hearing to approve the sale. That will be later
18 down the road.

19 THE COURT: Correct.

20 MR. CHASON: So today my understanding is
21 we are just having the bids.

22 THE COURT: There's really where, in my
23 mind, I can see -- do you think that would be an
24 issue down the road in the decision to approve
25 the sale?

1 MR. CHASON: Currently, with what I know
2 today, no. You know, with what I know today,
3 that the fact that Mr. Courtney used the Veranda
4 sale as one of his six comparable sales to come
5 up with this number, currently, what I know
6 today, that's not a problem for us to submit a
7 bid to Your Honor.

8 THE COURT: And so are you saying -- are
9 you wanting to reserve the right to raise the
10 issue for the approval process?

11 MR. CHASON: I don't have any more -- I
12 don't have any information to -- well, let me
13 just go ahead and tell you. My understanding
14 is --

15 Is that y'all's sealed bid?

16 MR. SUTLEY: (Nodding head affirmatively.)

17 MR. CHASON: Okay.

18 We have a sealed bid. They have a sealed
19 bid. Our bid will be contingent upon your order
20 being clarified.

21 THE COURT: I'm going to clarify it.

22 MR. CHASON: Okay. With the --

23 THE COURT: I'm just not getting there
24 until I'm comfortable that we're all on the same
25 page.

1 MR. CHASON: And, well, I mean, he's got
2 his. I've got mine.

3 THE COURT: No. I don't need those now.

4 MR. CHASON: Okay.

5 THE COURT: Before I do anything else, I
6 want to make sure we're all comfortable, because
7 just based on what I'm saying is, absent a
8 waiver of conflict, or whatever you want to call
9 it, I would -- you know, I brought this to your
10 attention. And so if y'all think that it's --

11 MR. SUTLEY: It's not an issue.

12 THE COURT: -- a conflict, then I'll be
13 happy to address that.

14 MR. CHASON: Judge, I guess my response to
15 that would be, I mean, is Your Honor
16 comfortable? Does Your Honor think there is a
17 conflict? You might know more than I know.

18 THE COURT: I have the information that was
19 provided to me and I have brought it to
20 you-all's attention.

21 MR. CHASON: Right. What I know is what
22 you know, and that's in the appraisal itself.
23 That's all I know is that in the appraisal
24 itself, one out of the six includes the sale to
25 The Veranda, LLC. And I think Trey Corte is

1 listed on there as I guess the developer.

2 THE COURT: Whatever it said on there.

3 MR. CHASON: Whatever it says. That's all
4 I know. And, you know, ultimately, he came up
5 with \$5,800. That's the bottom line. He came
6 up with \$5,800. So we are comfortable moving
7 forward today, you know, with the bidding
8 process.

9 THE COURT: Okay.

10 MR. CHASON: If Your Honor is not
11 comfortable or Your Honor --

12 THE COURT: I just saw it in the report and
13 I brought it to you-all's attention.

14 MR. CHASON: Yeah.

15 THE COURT: So with that being said, do
16 y'all want to go forward? Do you need any
17 additional time, or -- or -- are y'all asking me
18 -- you know, absent a waiver --

19 Now that I have brought it to your
20 attention, I do feel that everybody is going to
21 have to waive this as a conflict so that we can
22 move forward.

23 MR. SUTLEY: I don't see a conflict. If
24 there is one, I waive it. My client waives it.

25 MR. CHASON: Your Honor, I'm not sure what

1 I would be waiving. If what we are talking
2 about is strictly the appraisal and strictly the
3 fact that Mr. Courtney used the sale to The
4 Veranda, if that is all we are talking about,
5 then we are okay moving forward with Paragraph 5
6 of Your Honor's order, which is the bidding
7 process. If that's all we are talking about.
8 I'm just -- and I'm not trying to -- I
9 just don't -- I'm just --

10 THE COURT: I understand.

11 MR. CHASON: It makes me a little bit
12 uneasy waiving something that maybe I don't know
13 exists out there. That's all I'm saying is
14 like, I don't want to be on the record waiving
15 something that perhaps I don't know today.

16 THE COURT: Then absent a waiver, I would
17 be inclined to then -- I have brought it to your
18 attention, and I don't think -- I think by
19 bringing it to your attention we either have to
20 -- absent a waiver, I would be inclined to set
21 aside that order of August 27th, or at least as
22 it relates to the manner in which the sale is to
23 be conducted and recuse, then.

24 MR. CHASON: Okay.

25 MR. SUTLEY: Wait a minute. Wait a minute.

1 How can you set aside the manner in which it's
2 to be conducted and then recuse? Now, I can see
3 leaving the order in place and recusing and let
4 somebody else handle it, if that makes you feel
5 comfortable.

6 THE COURT: I'm saying -- it's not about
7 whether I feel comfortable. It's whether or not
8 -- I have brought this to your attention. And
9 absent -- if there's not an agreement to go
10 forward --

11 MR. SUTLEY: Look. Paragraph 4 is very
12 clear. Paragraph 4 says the minimum bid or
13 purchase price for the property shall be equal
14 to the appraised value.

15 Well, if Jason waives The Veranda as a
16 factor in the calculation of the appraisal, then
17 the bid can go forward whether you handle it or
18 we go get another judge or we get a monkey, it
19 doesn't matter.

20 Your Honor said in the order the parties
21 will submit a sealed bid. I have one. He has
22 one. It will equal the amount of the appraisal
23 at a minimum. Here's my bid. He has one too
24 somewhere. Now his isn't sealed, but I'm sure
25 he can lick the envelope.

1 MR. CHASON: Judge Norton, ultimately,
2 ultimately, as the judgment in this case, the
3 sale for division claim is an equitable
4 procedure.

5 THE COURT: Sure.

6 MR. CHASON: And if Your Honor, knowing
7 what you know about this case, about Trey Corte,
8 his relationship -- I understand that he works
9 with your wife. If any of that makes you
10 uncomfortable and you want to recuse yourself,
11 my client is not going to object to that.

12 And you know --

13 THE COURT: I don't -- I haven't gotten --
14 all I know is what I have divulged to you-all.

15 MR. CHASON: Right.

16 THE COURT: I'm just simply divulging this.

17 MR. CHASON: Yes, sir. I mean, Your Honor,
18 if --

19 THE COURT: That's in the report. That's
20 all I have.

21 MR. CHASON: I know. I mean it is my
22 understanding that Trey Corte has a relationship
23 with Clarence Burke.

24 THE COURT: Then we don't have to go any
25 further. Absent -- then what I would do is I

1 would simply recuse as it relates to the case
2 moving forward, and I would set aside -- I think
3 I'll let you-all determine this. Y'all agreed
4 that the property could not be --

5 MR. CHASON: Yes, sir.

6 THE COURT: -- divided. You agreed on the
7 appraiser and --

8 MR. CHASON: Yes, sir.

9 THE COURT: -- the property was appraised.
10 The dispute arose in the case where the -- where
11 you have the sale that we are going to conduct
12 today moving forward, who's going to buy the
13 property and --

14 MR. CHASON: Yes, sir.

15 THE COURT: -- ultimately the sales price
16 in the case. And all of that will turn -- I can
17 either leave that order in place or I would set
18 it aside altogether or I could set it aside as
19 it relates to the procedure in which the Court
20 ordered the property to be sold.

21 MR. CHASON: Yes, sir. Judge Norton, the
22 Plaintiff, my client, is aware and they're
23 conscious of the relationship between Clarence
24 Burke, who owns Pennstar.

25 THE COURT: I understand that.

1 MR. CHASON: They are aware of that. They
2 are aware of that. And there are discretionary
3 things that you can handle in a sale for
4 division case. There are. Such as the purchase
5 price based on the appraisal.

6 Would my client feel more comfortable with
7 another judge? Yes. Yes. I mean I'm not going
8 to sugarcoat it. Yes.

9 THE COURT: Then I will recuse. My
10 question is, do you want me to set aside that
11 order entirely or only as it relates to the
12 manner in which the property was going to be
13 sold?

14 LADY IN THE COURTROOM: Entirely.

15 MR. CHASON: I would say -- I would say a
16 fresh start, and then whoever takes it over can
17 do what they want to.

18 THE COURT: Okay. Then I will enter an
19 order to that effect. I'll get it out to
20 you-all, and I'll set aside that October[sic]
21 27th case and recuse.

22 MR. SUTLEY: Not the case. The order.

23 THE COURT: Excuse me -- that October 27th
24 order and recuse.

25 COURT REPORTER: Judge, I heard October

1 27th order. Is that wrong?

2 THE COURT: That's incorrect. The August
3 27th order.

4 COURT REPORTER: Thank you.

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6 (The Proceeding concluded at 3:02 p.m.)

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1 STATE OF ALABAMA)

2 COUNTY OF BALDWIN)

CASE NO.: CV-2014-900196

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4 **REPORTER'S CERTIFICATE**

5
6 I, SHELAGH DUNCKLEY, ACCR, Official Court Reporter,
7 duly commissioned and qualified, hereby certify that
8 the above proceedings were taken down by me and
9 transcribed by me, or under my personal supervision,
10 using computer-aided transcription, and that the above
11 is a true and correct transcript of said proceedings.

12 I further certify that I am neither of counsel nor
13 any relation to the parties to this action, nor am I in
14 any wise interested in the outcome of this case.

15 I further certify that I am duly licensed by the
16 Alabama Board of Court Reporting as a Certified Court
17 Reporter, as evidenced by the ACCR number following my
18 name below.

19 So certified on this, the 12th day of November,
20 2019.

21 /s/ Shelagh Dunckley

22 SHELAGH DUNCKLEY, ACCR #222; Expires 9/30/20
23 Official Court Reporter
24 For the Honorable C. Joseph Norton
25 Twenty-eighth Judicial Circuit
Bay Minette, Alabama